Supreme Court, U. S.
FILED
MAY 19 1979
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1396

LOUIS CHARBONNET, III, ET AL.

versus

HENRY BRADEN, IV., ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO DISMISS OR AFFIRM

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Pursuant to Rule 16 of this Court, Edwin Edwards, Governor, Paul Hardy, Secretary of State, and the Board of Election Supervisors of Orleans Parish, defendants/appellees, move to dismiss the appeal for failure to raise a question so substantial as to require plenary consideration by this Court, or alternatively, to affirm the judgment of the three-judge district court below.

ARGUMENT

The Governor, Secretary of State and Board of Election Supervisors adopt the Motion To Affirm previously filed by Henry Braden IV, appellee.

Additionally, it is pointed out that the focal point of this case is the removal of the polling place for Ward 7 Precinct 6 to a location outside of the territory of that precinct in violation of Section 533 of the Louisiana Election Code. LSA-

R.S. 18:533; see, Opn. Below, at p. A-59 of Jurisdictional Statement.

At the April 1, 1978 special election in question, Section 533 provided that "the polling place for a precinct shall be located in the precinct." LSA-R.S. 18:533(B).

By Act 580 of 1978, the Louisiana Legislature amended Section 533 to provide in pertinent part:

> "Except as otherwise provided in this Subsection, the polling place for a precinct shall be located in the precinct in a suitable public building, or, if none is available, then on private property.
>
> When, after the exercise of due diligence, the governing authority of a parish is unable to secure a location for a polling place within a precinct, the governing authority may select a location for the polling place which is within the nearest precinct having proper facilities. . . . The governing authority shall take all reasonable steps to notify the residents of the precinct of the location of the polling place.

Act 580 of 1978 was submitted pursuant to Section 5 of the Voting Rights Act to the United States Attorney General, by letter dated July 24, 1978. By letter dated September 19, 1978, the United States Attorney General interposed no objection to Act 580 of 1978.

What occurred in this case is now permitted by the Louisiana Election Code and this change in the Code has been approved by the Attorney General under 42 U.S.C. Section

1973(c).

Therefore, the circumstances of this case will not be repeated. The questions raised on the appeal are therefore insubstantial and the appeal should be dismissed. *Hall v. Beals*, 396 U.S. 45 (1969); *Diffenderfer v. Cent. Baptist Church of Miami, Fla. Inc.*, 404 U.S. 412 (1972).

Alternatively, the decision below not to grant the drastic equitable remedy sought was not an abuse of discretion nor an application of improper standards for granting the relief, and therefore the decision should be affirmed. *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973); *Doran v. Salem Inn, Inc.*, 422 U.S. 927, 931-2 (1975).

The threshold question presented in this case is whether a last minute change in the location of a polling place in violation of the Louisiana Election Code is required to be submitted under Section 1973(c), which question the Court below answered in the affirmative under the authority of *Perkins v. Matthews*, 400 U.S. 379 (1971).

The question then became the "difficult" one of an appropriate remedy. The District Court below found that voiding the entire election for the "technical violation of Section 5 of the Voting Rights Act as found herein" did now warrant such a remedy. It is this finding that is challenged on appeal and that should be affirmed. Opn. Below, at p. A-64 of Jurisdictional Statement.

Finally, plenary consideration by this Court is inappropriate because a regular primary election will be held in the subject State Senatorial District on October 27, 1979, i.e. before consideration in normal course could be had, which

election will make the challenge to the special election of April 1, 1978 moot. LSA-R.S. 18:402.

CONCLUSION

For the foregoing reasons, the appeal should be dismissed for failure to raise questions so substantial as to require plenary consideration, or alternatively, the district court should be affirmed.

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Motion to Dismiss or Affirm have been served on Gibson Tucker, Jr., 710 Carondelet Street, New Orleans, La.; Gilbert V. Andry, III, 710 Carondelet Street, New Orleans, La.; Jerald N. Andry, 710 Carondelet Street, New Orleans, La.; John A. Shea, 822 Perdido Street, New Orleans, La. and Donald Hoffman, City Hall, New Orleans, La.; Stephen Murray and Glen Burns, 612 Gravier Street, New Orleans, La.; Bruce J. McConduit. 1821 Orleans Avenue, New Orleans, La.; and Ronald P. Nabonne, 418 Common St., New Orleans, La.

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